STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING

GRETCHEN WHITMER
GOVERNOR

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DIRECTOR

August 6, 2021

VIA E-MAIL and U.S. MAIL

Mr. Jim Saric
Remedial Project Manager
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (SR-6J)
Chicago, Illinois 60604-3511

Dear Mr. Jim Saric:

SUBJECT: Michigan Department of Environment, Great Lakes, and Energy (EGLE) comments on the Proposed Plan, Kalamazoo River Operable Unit 5 (OU5) Area 3, Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund site.

On July 6, 2021, the United States Environmental Protection Agency (US EPA) provided a public notice that the Area 3 Proposed Plan (PP) would be released on July 8, 2021. The formal public comment period began on July 8, 2021, was open for 30 days and closes on August 6, 2021. On July 15, 2021, the US EPA held a virtual meeting to discuss the Area 3 PP, elements of the proposed alternatives and solicit public feedback.

The US EPA has selected Alternative 4 (A4) as the Preferred Alternative, which generally includes excavation of floodplain soils to a 20 milligram-per-kilogram (mg/kg) remedial action level (RAL20); no further action in the completed areas remediated as part of the time critical removal action (TCRA); remedial design sampling as approved by the US EPA; restoration of riparian habitat; targeted excavation of media exceeding 50 mg/kg total polychlorinated biphenyls (PCBs); upstream bank soil/sediment edge excavation, with bank protection and restoration engineering controls; monitored natural recovery for Pine Creek; capping and/or institutional controls or excavation for privately-owned residential parcels, and; requirements for long-term monitoring, inspections and maintenance to document progress toward achieving goals, remedy performance and to ensure constructed remedies remain protective.

Five alternatives (A1 to A5) were developed during the feasibility study, presented in the PP and range from “no action” (A1) to “aggressive area-wide excavation to a RAL0.33” (A5). Based on the US EPA’s evaluation and comparison of the five Alternatives to the threshold and primary balancing criterion that is presented in the PP, EGLE believes that A4, if designed and implemented appropriately, would be protective of human health and the environment, achieve remedial action objectives (RAOs) and be effective in the short and long-term. Additionally, key elements of A4 are comparable or improve upon elements presented in A2 and A3. For example, A4 includes additional PCB mass and volume removal from near-channel areas that would be subject to erosion, results in less

fill in floodplains that would be required for large-scale capping, requires the same level of monitoring and maintenance and proposes the same strategy for upstream bank soil and edge sediment excavation and bank stabilization. Therefore, EGLE supports the US EPA's selection of A4 as the Preferred Alternative for the Area 3 remedial action.

However, EGLE requests the US EPA provide clarification and slight modification to four items included in the PP to be addressed as part of the PP Responsiveness Summary and ultimately incorporated into text in the Area 3 Record of Decision (ROD).

1. The PP briefly mentions that there will be periodic inspection and maintenance (as needed) for the riverbanks in Area 3. EGLE requests that the US EPA require, as a condition in the ROD, the submittal of a standalone document that would be submitted immediately by the Respondent(s) to cover operations, monitoring and maintenance (OMM) for the areas within the footprint of the Area 3 TCRA that was awarded construction completion in 2019. The standalone document would ultimately be incorporated as an Appendix to the Area-wide OMM Plan (or similar document) which would be a required element of the remedial design and cover monitoring and maintenance for the entirety of Area 3. This would ensure that monitoring and maintenance within the TCRA footprint occurs until the remedy is completed within Area 3.

   The ROD should discuss at least some of the elements that would be included in the OMM Plan (or similar document) which may include but may not be limited to:
   - Periodic inspection and surveying of areas that were disturbed and/or restored during the TCRA.
   - Inspection and surveying of banks following high flow events (i.e., 2-year, 5-year, 10- year, 25-year, 50-year, 100-year) so that conditions leading to a partial or a full-scale failure can be identified, located, and repaired and to ensure that banks are able to withstand various flow conditions.
   - Completion and submittal of bank monitoring and maintenance reports.
   - Periodic surveying, monitoring and maintenance of the entire pull-back (from top of bank to the upland tie-in) so that conditions leading to a partial or a full-scale failure can be identified, located, and repaired and to ensure that banks withstand various flow conditions.
   - Maintenance ahead of full-scale failure if data suggests that sections of banks and/or buffer zone are failing or are eroding or unstable to prevent the erosion of PCB-contaminated floodplain soils from behind the buffer into the river.
   - Periodic surveys for invasive plant species and maintenance as required.
2. EGLE is concerned regarding the uncertainty surrounding the estimated timeframes to reach fish tissue goals for resident fish species being monitored, which has been ongoing since 1999. Recent data suggests that timeframes to reach fish tissue goals could be much further away than 30-years, although additional rounds of sampling over significant time steps will be needed to estimate and monitor timeframes to achieve fish tissue goals in resident species.

What contingencies will the US EPA take if long-term monitoring data suggests that fish tissue goals will not be met in acceptable timeframes?

EGLE requests the ROD include language that requires:

- The ongoing evaluation of long-term monitoring data for the three resident fish species that are monitored at the Site (adult carp, adult smallmouth bass, and young-of-year smallmouth bass), and submittal of long-term monitoring reports to monitor progress toward achieving RAOs and final remediation goals (FRGs).
- Continued discussions and evaluations of progress towards meeting FRGs with EGLE, which includes potential contingency plans and additional remediation if necessary.

3. Area 3 is somewhat unique in that there is a mix of state- and privately-owned industrial and residential property located within and adjacent to the site boundary. The current and reasonable potential future use of State and industrial properties may be more certain than residential land where uses are already highly variable and could change between now and the time the remedy is implemented. In general, state-owned property is primarily used for recreation, fishing and hunting. Industrial property includes current and historic commercial and manufacturing facilities. Privately-owned residential parcels within or adjacent to Area 3 are “maintained”, “unmaintained” or a combination of both, and the boundary between state- and privately-owned residential property is not always clear. Therefore, the appropriateness of proposed remedial strategies included as part of A4 (i.e., excavation, capping, etc.) for privately-owned residential property should be evaluated on a case-by-case basis with coordination between the property owner, Respondent(s), the US EPA, and EGLE.
4. EGLE believes it is necessary to clarify the use of the Part 201 non-residential cleanup level (990 parts per trillion [ppt]). For any privately-owned, or other owned property with non-residential land use the 990 ppt standard would apply. If a portion of a residential property is being “unmaintained” and used as non-residential and it is determined dioxin concentrations exceed 990 ppt, excavation may be necessary.

   Therefore, EGLE recommends that if the following language from the PP is used in the ROD it be revised as following:

   “EGLE offered Part 201 soil cleanup criteria for dioxins/furans as an ARAR. The US EPA evaluated the potential ARAR and concluded that the Part 201 soil cleanup criteria for dioxins/furans are not an ARAR for residential properties because the US EPA’s dioxin/furan residential RSL, which is proposed as a PRG, is more stringent than the values promulgated by state regulations. Although there is currently no data indicating contamination that would trigger cleanup based on the State’s cleanup criteria for dioxin/furans on non-residential properties, the US EPA considers Part 201 an ARAR for non-residential properties.”

And,

"The US EPA concluded that the State soil cleanup regulations are considered ARARs for non-residential properties but are not considered ARARs for residential properties, since the residential risk-based PRG established by application of The US EPA's RSL for dioxins/furans is more stringent than the state's promulgated value",

be changed to:

"EGLE offered Part 201 soil cleanup criteria for dioxins/furans as an ARAR. The US EPA evaluated the potential ARAR and concluded that the Part 201 **residential** soil cleanup criteria for dioxins/furans are not an ARAR for residential properties because the US EPA's dioxin/furan residential RSL, which is proposed as a PRG, is more stringent than the values promulgated by state regulations. Although there is currently no data indicating contamination that would trigger cleanup based on the State's cleanup criteria for dioxin/furans on non-residential properties, the US EPA considers Part 201 **non-residential cleanup criteria for dioxins/furans** an ARAR for **residential and** non-residential properties."

And,

"The US EPA concluded that the State **non-residential** soil cleanup regulations are considered ARARs for non-residential properties **and** ~~but are not considered ARARs for~~ residential properties **but the State residential soil cleanup regulations are not considered ARARs for residential property** since the residential risk-based PRG established by application of the US EPA's RSL for dioxins/furans is more stringent than the state's promulgated value.

EGLE is requesting the change because the non-residential value may be used as the threshold to determine if a restrictive covenant by itself is adequate (pending agreement with the landowner) or if additional remedial action (excavation and/or capping and restrictions) is necessary. This is also more consistent with wording on page 22, which states, "For parcels with non-residential land use, EPA proposes a PRG of 990 ppt TEQ consistent with EGLE Part 201 soil cleanup criteria".

The Area 3 ROD is the third ROD that will be authored and represents a significant milestone and achievement for OU5. In Area 3, removal and remedial actions have been coupled so that significant PCB contamination was removed in a timely and effective manner and the cleanup can progress in a logical and methodical fashion. However, large portions of OU5, including portions of Area 3, remain unaddressed and significant investigation and remedial work is still needed. Furthermore, although a protective remedy may be selected, outcomes are not guaranteed. A great deal of uncertainty exists in how the proposed alternatives will actually affect PCB fish tissue concentrations over

time. Ultimately, it is the long-term effect of the work conducted in Area 3 on reducing PCB fish tissue concentrations that is the objective, which is why EGLE believes that the collection and evaluation of long-term monitoring data and documenting progress toward achieving long-term goals in reasonable timeframes through the five year review process is critical.

EGLE seeks to preserve its ability to continue furthering key concerns where appropriate in the upcoming Remedial Design stages of the process. EGLE appreciates the opportunity to have reviewed and commented on the PP and looks forward to continued progress for Area 3

If you have any questions, please contact Mr. Daniel Peabody, Environmental Quality Analyst, Remediation and Redevelopment Division at 517-285-3924; PeabodyD@Michigan.gov; or EGLE, P.O, Box 30426, Lansing, Michigan 48909-7926

Sincerely,

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517-285-3924

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